

Special Civil Application No 1319 of 1983

Date of decision: 08/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

ISABHAI ADAMBHAI DERAIIYA

vs

SECRETARY TO THE GOVT. (APPEALS) & ANR.

Appearance:

Shri G.M. Joshi, Advocate, for Shri M.O. Joshi,
Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, as instructed
by Messrs. Purnanad & Co., for the Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Collector of Amreli (respondent No.2 herein) on 22nd May 1981 as affirmed in revision by the order passed by the Secretary to the Government of Gujarat in Revenue Department (Appeals) at Ahmedabad (respondent No.1 herein) on behalf of the State of Gujarat on 3rd January 1983 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 inter alia cancelled the allotment of one parcel of land bearing survey No. 318 admeasuring 1040 square meters (the disputed land for convenience) in favour of the petitioner made earlier.

2. The facts giving rise to this petition move in a narrow compass. It appears that the petitioner applied for allotment of the disputed land for constructing a ginning factory thereon. By the order passed by respondent No. 2 on 29th May 1979, the disputed land came to be allotted in favour of the petitioner herein. Its possession was however given to the petitioner on 28th April 1976. A copy of the possession receipt is at Annexure A to this petition. It appears that the allotment of the disputed land in favour of the petitioner was on certain and terms and conditions including the condition regarding completion of the construction work within one year from the date of the order. It appears that the petitioner could not complete the construction work within the stipulated time-limit though extended from time to time on two occasions. Thereupon the petitioner was served with one show-cause notice of 28th May 1980 calling upon him to show cause why the disputed land should not be resumed by the Government as the construction thereon was not completed within the stipulated time-limit as extended from time to time. The petitioner filed his reply thereto. He was heard through his advocate. By his order passed on 22nd May 1981, respondent No.2 cancelled the allotment of the disputed land in favour of the petitioner and ordered its resumption by the State Government. Its copy is at Annexure C to this petition. The aggrieved petitioner carried the matter in revision before respondent No.1 under sec. 211 of the Bombay Land Revenue Code, 1879. By his order passed on 3rd January 1983 in the aforesaid revisional application, respondent No.1 rejected it. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure C to this petition as affirmed in revision by the order at Annexure B to this petition.

3. Without entering into the merits of the contention that the condition imposed regarding completion of the construction cannot be said to be mandatory, this petition can be disposed of on a short ground that, during the pendency of this petition, the petitioner completed the construction work pursuant to the order of interim relief passed in his favour on 17th March 1983. It appears that Civil Application No. 1479 of 1991 was moved in this writ petition for modification of the order of 29th May 1971 allotting the disputed land to the petitioner for change of its user from the ginning factory to the castor oil extraction plant. By the order passed separately on this civil application, it has come to be granted. I am told by learned Advocate Shri Joshi for the petitioner that the castor oil extraction plant has come to be constructed and has been in operation for quite some time. It has thus become a fait accompli. In that view of the matter, the purpose behind passing the impugned order at Annexures B and C to this petition

would no longer survive.

4. It is true that the petitioner has been guilty of inordinate delay in raising construction on the disputed land after he obtained possession pursuant to the possession receipt at Annexure A to this petition. The time-limit prescribed by the condition therefore deserves to be extended by imposing on him some penalty. It appears that earlier such extension was granted on payment of 20 times the N.A. assessment. I think on the facts and in the circumstances of the case, the extension of the time-limit for completion of the construction work should be made in favour of the petitioner by ordering him to pay 50 times the N.A. assessment. The petitioner may be directed to deposit this amount in the office of respondent No. 2 within one month from the date of receipt of the writ in this case.

5. In the result, this petition is accepted. The order passed by the Collector of Amreli (respondent No.2 herein) on 22nd May 1981 at Annexure C to this petition as affirmed in revision by the order passed by and on behalf of the State of Gujarat on 3rd January 1983 at Annexure B to this petition is quashed and set aside. The time-limit for completion of the construction work is extended till the date of its completion on payment of 50 times the N.A. assessment. Such payment will be made in the office of respondent No.2 within one month from the date of receipt of the writ in his office. It will be open to the petitioner to produce a certified copy of this judgment in the office of respondent No. 2 for the purpose of making payment of 50 times the N.A. assessment as ordered by this Court and the time-limit of one month shall start from the date of production of the certified copy of this judgment. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.
